

EXHIBIT C
TO JUNE 8, 2020 COMPLAINT

EXPERT REPORT
of
DANIEL RUBIN, ESQ.
May 19, 2020

DAMAGES REPORT IN CONNECTION WITH THE FOLLOWING WORKS:

“LET’S GET IT ON,” PERFORMED BY MARVIN GAYE
(herein referred to as “Infringed Work”)

as compared to

“THINKING OUT LOUD,” PERFORMED BY ED SHEERAN
(herein referred to as “Infringing Work”)

This Expert Report was prepared at the request of Plaintiff’s counsel in the matter of
***Structured Asset Sales, LLC v. Sheeran, et al.*, Case No. 1:18-cv-05839-LLS**

I am an attorney, and independent sample clearance agent that has been clearing samples for over 28 years. I am the co-founder and President of Sample Clearance Limited (“SCL”), a sample clearance agency.

As set forth in my attached resume, at SCL, we undertake or undertook all of the following:

- Identifying unauthorized uses of musical compositions and master recordings, negotiating settlements, drafting settlement agreements, and trafficking payments on behalf of our music business clients, including Warner Music Group, Sony Music Entertainment, Spirit Music Publishing and BMG-Chrysalis Music.
- Clearing samples for major record companies and independent labels.
- Securing synchronization licenses for major movie studios and television networks.
- Maintaining a database of recordings and compositions that contain samples and interpolations and the sampled recordings or interpolated musical compositions that are contained therein.
- Assisted video game publishers and developers, including Ubisoft, Eidos, and Arush Entertainment, select and license music for video games.
- Negotiated ringtone licenses with over 200 music publishers on behalf of Namco America’s Pac-Tones application.
- Handled all incoming sample requests for Capitol and Blue Note Records, including negotiating rates, preparing agreements, trafficking payments, and following up with licensees to make sure all royalties were up to date.

All told, in the 28 years SCL and I have been clearing samples, my colleagues and I have cleared thousands of samples and replays for some of the biggest artists in the music industry.

I have listened to both the song “Let’s Get It On” by Marvin Gaye and “Thinking Out Loud” by Ed Sheeran. My opinion is based on my expertise in clearing samples and interpolations. “Interpolations” refers to the creation of musical works and recordings that substantially copy or derived from existing works. For example, the instrumental melody from Puff Daddy’s “I’ll Be Missing You” is derived from a sample from the Police’s “Every Breath You Take” and an interpolation of the vocal melody from the same song. In contrast, in Flo Rida’s “Right Round” the chorus is interpolated entirely from “You Spin Me Round (Like A Record)” by Dead or Alive.

I have no doubt that the combination of elements, especially the instrumentation and underlying chord progression-bass line combination of “Let’s Get It On,” was featured throughout “Thinking Out Loud.” The underlying chord progression-bass line combination from “Let’s Get It On” is virtually identical to chord progression-bass line combination of “Thinking Out Loud.” There are also striking similarities between the melodies and styles of the two works. If I had been asked by a client to advise them as to whether this song should be cleared, I would have

told them that it absolutely would need to be cleared, as the songs sound strikingly similar and that if they did not do so they would be looking at an infringement claim and that it could end up costing them a lot more after the fact.

It is my opinion that this use would be at least a 80% use under normal circumstances, however when an interpolation is not cleared prior to release of the record and subsequently becomes a copyright infringement case, the percentage often ranges as high as 100% copyright ownership, in addition to monetary damages.

There are a number of factors that – if present – suggest higher percentages. All of the following are present here and support a very high percentage, toward the top of the 80%-100% range:

1. “Let’s Get It On” was and remains a hugely popular song since its release in 1973. There are few songs that are so well-known. In the marketplace, the more successful and well-known the original song, the greater license dollars and rates it can command.
2. Marvin Gaye was and remains one of the most influential artists in the history of popular music. Referencing his and Mr. Townsend’s work also supports higher licensing fees and higher ownership rates for the owners of “Let’s Get It On.”
3. Mr. Sheeran has enjoyed a meteoric rise in his popularity and success following the release of “Thinking Out Loud.” These factors also indicate a higher rate, as they can be attributed to some degree to the Sheeran work.
4. Mr. Sheeran and the other Defendants are sophisticated for-profit players in the music industry. They surely knew the need to clear copyrights before releasing new songs. Their decision to proceed without doing so also supports the highest of percentages, as well as the fact that it goes without saying that they paid no, much less any substantial, upfront money as a down payment to license “Let’s Get It On.”
5. I understand that the 1973 copyright registration, which was based on the sheet music by Edward Townsend and Marvin Gaye, has been strengthened by an additional copyright registration based on the 1973 sound recording by Marvin Gaye of “Let’s Get It On.” The increased scope of protected rights further supports a high license percentage.

I have not testified at trial or in deposition in the last four years. I have not authored any publications in the last ten years. I am being compensated at the rate of \$500 per hour for my work in this matter.

May 19, 2020

Daniel Rubin, Esq.
President, Sample Clearance Limited



DANIEL R. RUBIN, ESQ.

33 Gallatin Drive, Dix Hills, NY 11746

(631) 462-1752 (work)/(917) 861-7014 (cell); (drubin@sampleclearanceltd.com)

www.sampleclearanceltd.com

EXPERIENCE

Sample Clearance Limited

Melville, New York

Co-founder and President

June 1992 - Present

- Identify unauthorized uses of musical compositions and master recordings, negotiate settlements, draft settlement agreements, and traffic payments on behalf of our music business clients, including Warner Music Group, Sony Music Entertainment, Spirit Music Publishing and BMG-Chrysalis Music.
- Clear samples for major record companies and independent labels.
- Secure synchronization licenses for major movie studios and television networks.
- Secured and negotiated settlement on behalf of Spirit Music Publishing with regard to the unauthorized use of a Chubby Checker composition in "Jump Around" by House of Pain.
- Secured and negotiated settlement on behalf of Jimmy Spicer with regard to the unauthorized sampling of the composition entitled "The Bubble Bunch" in the composition entitled "Clumsy" by Fergie.
- Secured and negotiated settlement on behalf of Saregama India for the unauthorized use of a composition owned by Saregama that was sampled in "Toxic" by Britney Spears.
- Created a database of recordings and compositions that contain samples and the sampled recordings that are contained therein.
- Assisted video game publishers and developers, including Ubisoft, Eidos, and Arush Entertainment, select and license music for video games.
- Negotiated ringtone licenses with over 200 music publishers on behalf of Namco America's Pac-Tones application.
- Handled all incoming sample requests for Capitol and Blue Note Records, including negotiating rates, preparing agreements, trafficking payments, and following up with licensees to make sure all royalties were up to date.

Law Offices of Daniel Rubin, P.C.

Melville, New York

Principal August

2007 – Present

- Advise and represent clients on all aspects of the music business.
- Negotiate recording, publishing, production, and management agreements on behalf of clients.
- Negotiate settlement agreements on behalf of clients who are not receiving royalties that are rightfully owed to them.
- Negotiate settlement agreements on behalf of clients whose music is utilized without authorization in motion pictures.

- Negotiate settlement agreements on behalf of clients whose music is utilized without authorization in video games.
- Obtain and negotiate finders-fee agreements for clients who assist in securing sale of music catalogs.
- Obtain and negotiate sub-publishing agreements for clients.

Rubin & Weissman, LLC

Co-founder and Principal

New York, New York

August 2000- July 2007

- Administrated Cold Chillin' Music catalog.
- Obtained and negotiated sale of Cold Chillin' catalog to CAK Music.
- Negotiated sale of Nia Records to Tuff City Records.
- Filed copyright registration certificates with the U.S. copyright office on behalf of clients.
- Prepared mechanical licenses for publisher clients.
- Negotiated management agreements and production agreements on behalf of clients.
- Negotiated publishing deal for producer of Insane Clown Posse.
- Obtained production royalties for producer of Insane Clown Posse who was not getting paid.

EDUCATION

Fordham University School of Law

Juris Doctor, June 1993

New York, NY

University of Michigan

Bachelor of Arts, May 1990

Major: Economics

Ann Arbor, MI

PROFESSIONAL EXPERIENCE PUBLICITY

- Sample Clearance Limited profiled in the November 2004 issue of XXL Magazine article titled "Be Clear".
- Quoted in the March 1998 issue of The Source Magazine article entitled "Marley Marl is Cold Chillin'".
- Quoted in the March 2, 1996 issue of Billboard Magazine article entitled "View From The Samplers' Side".
- Spoke on several panels discussing sampling at music business conferences.

BAR ADMISSION

New York (January, 1994)